

REMARKS

Claims 1-39 are pending in the above-identified application. Claims 1-39 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-31 of copending Application No. 10/029,014. The Examiner notes that this is a provisional rejection because the conflicting claims have not yet been allowed. In addition, Claims 1-2, 4-8, 12-13, 15-19, and 34-37 are rejected under 35 U.S.C. §102(b) as being anticipated by Bourant. In addition, claims 3, 9-11, 14-33, 38 and 39 are rejected under 35 U.S.C. §103(a) as being unpatentable over Bourant in view of Ogle. In response to the present Office Action, Claims 9, 20 and 31 have been cancelled, and claims 1, 10, 12, 21, 23, 32, 34 and 36 have been amended to further clarify the subject matter therein. Applicant respectfully requests that the above referenced rejections be reconsidered and withdrawn.

Regarding the rejection under provisional obviousness-type double patenting, Applicant believes that the claims in the instant application are not obvious over the claims of copending Application No.: 10/029,014. Alternatively, Applicant will address this provisional obviousness-type double patenting rejections when all other rejections are resolved.

Regarding the rejections under Section 102(b) and Section 103(a), Applicant respectfully traverses the Examiner's rejections based in whole or in part on Bourant. As explained below, Bourant is directed to an apparatus and method fundamentally different from that of the invention. Bourant discloses a method and apparatus for forced flow electrophoresis. The disclosed apparatus has six compartments divided by a microporous membrane, dialysing membranes and ion-selective membranes. At no point does Bourant suggest or refer to an electrophoresis apparatus with an electrophoresis separation membrane having a defined pore size. Accordingly, it is submitted that the present invention is novel in light of Bourant.

Moreover, Applicant respectfully submits that that the new claims are not obvious over Bourat in view of Ogle. There is no motive for a person skilled in the art requiring large scale separation of molecules and movement of fluids, whilst maintaining the ability to concentrate samples without adversely affecting the activity, functionality and quantity of the sample to combine the teachings of Bourat or Ogle. Bourat teaches an apparatus used in the fractionation of an aqueous liquid such as blood. It is submitted that Bourat does not teach or suggest "an electrophoresis apparatus . . . wherein at least one of the membranes is an electrophoresis separation membrane having a defined pore size . . . wherein at least one barrier membrane controls substantial bulk movement of liquid into and out of the first interstitial volume so as to obtain at least a partially concentrated product in the first interstitial volume". Accordingly, it is submitted that a person skilled in the art would not be motivated by the teachings of Bourat to produce the present invention.

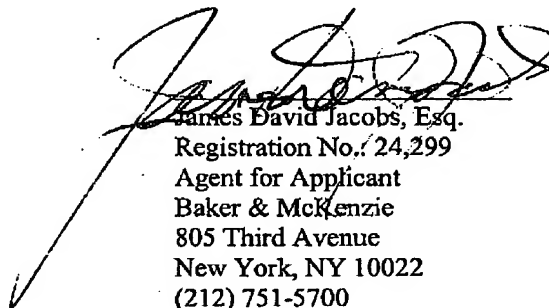
Ogle does not compensate for the inadequacies of Bourat. Rather, Ogle teaches an apparatus for purification of macromolecules in solution, wherein the apparatus may be cooled by various means and comprises a separation membrane of defined pore size. Ogle does not, however, teach or suggest "an electrophoresis apparatus . . . wherein at least one of the membranes is an electrophoresis separation membrane having a defined pore size . . . wherein at least one barrier membrane controls substantial bulk movement of liquid into and out of the first interstitial volume so as to obtain at least a partially concentrated product in the first interstitial volume". Accordingly, there would be no reason for one skilled in the art to consider the teaching of Ogle in order to produce an electrophoresis apparatus capable of obtaining at least a partially concentrated

product. As such, it is submitted that the present invention is not only novel but also non-obvious over the cited prior art.

In view of the foregoing amendments and arguments, Applicant respectfully submits that the claims are in condition for allowance. If the Examiner has any questions regarding this Response to Office Action or the Application in general, the Examiner is invited to contact the Applicant's attorney at the below listed telephone number. If the Commissioner determines that additional fees are due, please charge our Deposit Account No. 02-0393.

Respectfully submitted,

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